TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1901~~ 1902.

No. ~~240~~ 42.

THE SECURITY TRUST COMPANY, AS ADMINISTRATOR OF THE ESTATE OF SUMNER W. MATTESON, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM H. DENT, AS RECEIVER OF THE FIRST NATIONAL BANK OF DECORAH.

IN ERROR TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED JANUARY 28, 1901.

(18,034.)

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May term, 1900, of said court, begun and held at the United States court-house in the city of St. Paul, Minnesota, on the first Monday in May, to wit: the seventh day of May, A. D. 1900, before the Honorable Henry C. Caldwell, Honorable Walter H. Sanborn and Honorable Amos M. Thayer, circuit judges.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the sixteenth day of November, A. D. 1899, a transcript of record, pursuant to a writ of error directed to the circuit court of the United States for the district of Minnesota, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, was defendant in error, which said transcript of record is in the words and figures following, to wit:

1 UNITED STATES OF AMERICA:

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Pleas before the honorable judges of the circuit court of the United States of America for the district of Minnesota, third division, of the January, 1899, term of said court, held in the city of St. Paul, in said district, in the year of our Lord 1899.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on this 22nd day of January, A. D. 1897, came the plaintiff and filed in the clerk's office of said court its bill of complaint in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The petitioner above named respectfully shows to the court that the First National Bank of Decorah was and is a corporation duly

incorporated, organized and created under the national banking laws of the United States and is a citizen and resident of the State of Iowa and was prior to the 10th day of November, 1896, doing a general banking business at the city of Decorah in the State of Iowa.

That by reason of certain losses theretofore made, the said First National Bank of Decorah suspended its banking business, and all affairs of said bank were taken charge of by the Comptroller of the Currency of the United States, and thereafter, and on the 24th day of November, 1896, the petitioner above named was by said Comptroller of the Currency of the United States, and in conformity with the United States statutes in such case made and provided, appointed receiver of the said First National Bank of Decorah, and duly qualified and entered upon the discharge of his duties as such receiver, and has ever since been and now is the duly appointed, qualified and acting receiver of the said bank, and at all the times hereinbefore stated, ever since has been and now is a citizen and a resident of the State of Iowa.

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II.

That the defendant, The Security Trust Company is a corporation created under and by virtue of the laws of the State of Minnesota, and doing business in the State of Minnesota, and having its principal place of business at the city of St. Paul, county of Ramsey, State of Minnesota, and is a citizen and resident of the State of Minnesota and was duly appointed administrator of the estate of Sumner W. Matteson, deceased, by the proper probate court in the State of Minnesota, to wit, the probate court of the county of Ramsey and State of Minnesota, on or about the 3rd day of September, 1895. That during his lifetime and at all the times hereinafter stated, the said Sumner W. Matteson, deceased, was a resident and citizen of the State of Minnesota.

III.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, otherwise known as S. W. Matteson, executed his certain promissory note in writing, whereby for value received he promised to pay to the order of himself, on demand, after date, the sum of thirteen hundred dollars ($1,300), with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

No. —. $13,000.00

DECORAH, IOWA, *April 15th*, 1895.

On demand after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, thirteen hundred dollars, with interest at the rate of six per cent. per annum until paid.

Post-office, St. Paul, Minn.

(8'd) S. W. MATTESON.

Due ——. Demand.

29636.

Indorsed on back: S. W. Matteson. Interest paid hereon for six mos. to Oct. 15, '95. (Chge. ac.) $39.00.

That afterwards, to wit, on the 16th day of April, 1895, and before maturity of the said note, the said S. W. Matteson endorsed said note in blank, and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah. That heretofore, to wit, on the 16th day of April, 1895, the said First National Bank of Decorah purchased the said note, for value, before maturity, in the usual course of business, and without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, otherwise known as S. W. Matteson, deceased, executed his certain other promissory note in writing, whereby for value received, he promised to pay to the order of himself four months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows:

$2,500.00.

No. —.

DECORAH, IOWA, *April 15th*, 1895.

Four months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, two thousand, five hundred dollars, with interest at the rate of six per cent. per annum until paid.

S. W. MATTESON.

(S'd)

29637. Due ——.
Post-office, St. Paul, Minn.
Due Aug. 15, '95.

Indorsed on back: S. W. Matteson. Interest paid hereon 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That thereafter, to wit, on the 16th day of April, 1895, and before the maturity of said note, the said S. W. Matteson endorsed said note in blank and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah, above named. That heretofore, to wit, on the 16th day of April, 1895, the First National Bank of Decorah purchased the said note, for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, deceased, executed his certain other promissory note in writing, whereby for value received he promised to pay to the order of himself, five months after date the sum or twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures as follows, to wit:

No. —. $2,500.00

DECORAH, IOWA, *April 15th*, 1895.

Five months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, 4 two thousand and five hundred dollars, with interest at the rate of six per cent. per annum until paid.

(S'd) S. W. MATTESON.

Post-office, St. Paul, Minn.

29638. Due Sept. 15, 1895.

Indorsed on back: S. W. Matteson. Interest paid hereon for 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That afterwards on the 16th day of April, 1895, and before the maturity of the said note, the said S. W. Matteson endorsed the note in blank and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah. And on the 16th day of April, 1895, the said First National Bank of Decorah purchased said note for value, before maturity, in the usual course of business, without any notice of defense or defenses to said note.

That heretofore, to wit, on the 15th day of April, 1895, the said Sumner W. Matteson, above named, executed his certain other promissory note in writing whereby for value received he promised to pay to the order of himself, six months after date, the sum of twenty-five hundred dollars, with interest thereon at the rate of six per cent. per annum from date until paid. That said promissory note is in words and figures, as follows, to wit:

No. —. $2,500.00.

DECORAH, IOWA, *April* 15, 1895.

Six months after date, for value received, I promise to pay myself or order at the First National Bank of Decorah, Iowa, two thousand and five hundred dollars, with interest at the rate of six per cent. per annum until paid.

(S'd) S. W. MATTESON.

29639.
Post-office, St. Paul, Minn.
Due Oct. 15–18, '95.

Indorsed on back: S. W. Matteson. Interest paid hereon for 6 mos. to Oct. 15, '95. (Ch'g'd ac.) $75.00.

That afterwards and on the 16th day of April, 1895, and before the maturity of the said note, the said S. W. Matteson endorsed said note in blank and said note was, for value received, sold, transferred, and assigned by the said Matteson to the First National Bank of Decorah. And on the 16th day of April, 1895, the said First National Bank of Decorah purchased said note for value, before maturity, in the usual course of business, without any notice of any defense or defenses to said note.

That heretofore, to wit, on the 19th day of October, 1894, the said Summer W. Matteson, otherwise known as S. W. Matte-
5 son, executed his certain other promissory note in writing, whereby, for value received he promised to pay to the order of himself, six months after date, the sum of three thousand dollars, with interest thereon at the rate of six per cent. per annum from date until maturity and interest thereon after maturity at the rate of eight per cent. per annum until paid. That said promissory note (—) in words and figures as follows, to wit:

No. —. $3,000.00.

DECORAH, IOWA, *Oct.* 19, 1894.

Six months after date for value received, I promise to pay myself or order, at the First National Bank of Decorah, Iowa, three thousand dollars, with interest at the rate of six per cent. per annum before due, 8 per cent. after until paid.

(8'd) S. W. MATTESON.

Post-office ——, Due ——.
Due April 19–22, '95.
No. 29144.

(Indorsed on back:) S. W. Matteson. Interest paid thereon to maturity ($90.00) (ch'g'd ac.).
92. $116. Paid hereon on ac. interest (ch'g'd ac.).
$800.00 paid hereon, as of date Feb'y 18, '96, eight hundred dollars.

That afterwards, to wit, on the 19th day of October, 1894, before the maturity of the said note, the said Matteson endorsed said note in blank, and said note was, for value received, sold, transferred and assigned by the said Matteson to the First National Bank of Decorah, and on said 19th day of October, 1894, the said First National Bank of Decorah purchased said note for value before maturity, in the usual course of business, without any notice of defense or defenses to said note.

That the said First National Bank of Decorah at the time of its suspension and at the time it was, as hereinbefore set forth, taken charge of by the Comptroller of the Currency of the United States, was the *bona fide* holder and owner of all of said notes hereinbefore described and set forth, all of which said notes at the time of the appointment of your petitioner as receiver of said First National Bank of Decorah, since said 24th day of November, 1896, has been and now is the owner and the holder of said notes above described and all thereof. And that no part of said notes had been paid, except the interest on the first four notes herein set forth, to October
15, 1895, and the sum of eight hundred dollars, together
6 with interest to the 18th day of February, 1896, paid and endorsed on the note last hereon described, dated October 19, 1894. That the statutes of the State of Iowa authorize and make legal a contract for the payment of a greater rate of interest after

maturity than before maturity. That all of said above-described notes were negotiated and delivered by the said Matteson to said First National Bank of Decorah in the city of Decorah and State of Iowa.

IV.

That the defendant, as administrator of the estate of said Sumner W. Matteson, deceased, has in its hands and under its control, a large amount of property, money and effects, which belonged in his lifetime to the said Sumner W. Matteson, and petitioner, on information and belief alleges that the property, money and effects remaining in the hands of said defendant and under its control *is* more than sufficient to pay the amount due this petitioner upon said promissory note hereinbefore described and set forth, after the payment of all just debts and charges against the estate of the said Sumner W. Matteson. That the estate of said Sumner W. Matteson is now in process of settlement, and in the probate court of Ramsey county, Minnesota, and has not been fully or finally settled and probated, and that said administrator has never been discharged and is still the administrator of the said estate of said Sumner W. Matteson, deceased.

V.

That no part of said notes has been paid, except as herein alleged, and petitioner had demanded that defendant make payment thereof out of the funds, money and property in its hands and belonging to the estate of said Sumner W. Matteson, and although said defendant at all times since its appointment as such administrator well knew that said notes were due and unpaid, and were held by the said First National Bank of Decorah up to the time of the appointment of your petitioner herein, and by said petitioner since said appointment of your petitioner as receiver, defendant has neglected and refused to pay said notes or any part thereof.

Wherefore, petitioner demands judgment against the defendant for the sum of eleven thousand eighty-two and $\frac{4}{100}$ dollars ($11,082.40), and interest on eight thousand and eight hundred dollars ($8,800), at the rate of six per cent. per annum from and since the 15th day of October, 1895, and interest at the rate of eight per cent. per annum on the sum of two thousand two hundred eighty-
7 two and $\frac{4}{100}$ dollars ($2,282.40) from and since the 18th day of February, 1896, together with the costs and disbursements of this action.

STRINGER & SEYMOUR,
Attorneys for Petitioner, National German-American Bank Bldg., St. Paul, Minnesota.

Complaint. Filed Jan. 22, 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

STATE OF IOWA, } ss:
County of Winneshiek, }

William H. Dent came before me personally and being first duly sworn, deposes and says, that he is the petitioner in the above-entitled action; that the foregoing complaint is true of his own knowledge, except as to those matters therein stated on his information and belief, and that as to those matters he believes it to be true.

WILLIAM H. DENT.

Subscribed and sworn to before me this 20th day of January, 1897.

[NOTARIAL SEAL.] AMELIA NEUFERT,
Notary Public, Winneshiek City, Iowa.

And thereupon, upon application of said attorneys a summons was duly issued out of said court under the seal thereof and in words and figures following, to wit:

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In the Circuit Court of the United States for the District of Minnesota.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Plaintiff,
against
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant. } Summons.

The President of the United States of America to the defendant above named, Greeting:

You are hereby summoned and required to answer the complaint in this action, which has been filed in the office of the clerk of this court, in St. Paul, county of Ramsey, and State of Minnesota, and file your answer in the clerk's office, within twenty days after the service hereof, excluding the day of such service, and if you fail to answer the complaint aforesaid, the plaintiff will take judgment against you for the sum of eleven thousand eighty-two and 8 $\frac{40}{100}$ dollars ($11,082.40), and interest on eight thousand and eight hundred (—) ($8,800) at the rate of six per cent. per annum from October 15th, 1895, and interest at the rate of 8 per cent. per annum on the sum of two thousand two hundred, eighty-two and $\frac{40}{100}$ ($2,282.40) from Feb'y 18th, 1896, together with the costs and disbursements of this action.

For the marshal of the district of Minnesota to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme

U. S. Circuit Court Seal.

Court of the United States of America, this 22nd day of January, A. D. 1897. Issued at my office in the city of St. Paul, under the seal of said circuit court, the day and year last aforesaid.

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.

Summons. Returned and filed Jan. 23rd, A. D. 1897. Henry D. Lang, clerk. By Louise B. Trott, deputy.

UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that I served the annexed summons on the therein-named defendant, The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, by handing to and leaving a true and correct copy thereof with Edward J. Hodgson, the president of said trust Co., personally at St. Paul in said district on the 23rd day of January, A. D. 1897.

R. T. O'CONNOR,
U. S. Marshal,
By GEO. D. HENRY, *Deputy*.

Fees $2.06.

Thereafter and on the 27th day of February, 1897, the following answer was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For answer to the plaintiff's (styled petitioner in the complaint) complaint in the above-entitled action, the defendant shows to the court and alleges:

9 It admits all the allegations contained in the first paragraph or subdivision of said complaint, except that it alleges that it has no knowledge or information sufficient to form a belief as to whether the said plaintiff was appointed receiver of said First National Bank of Decorah, or is such receiver, and therefore it denies that the plaintiff was so appointed receiver or is such receiver.

It admits all the allegations contained in paragraph or subdivision II of said complaint.

Further answering and for a separate defense herein it alleges

that it duly qualified as administrator of the estate of said deceased and proceeded to discharge its duties as such administrator under such appointment; that thereafter such proceedings were duly had in said probate court for Ramsey county, Minnesota, that said estate was fully administrated and settled, and that this defendant duly made and filed its final account of such administration, and that the said final account was by probate court duly examined, settled and allowed, and the residue of the property of said deceased, and of said estate, duly assigned and transferred to and vested in the next of kin and heirs of said deceased by said probate court, and this defendant as such administrator duly discharged by said probate court long before the commencement of the above-entitled action, that after the said property and estate had been so duly assigned and transferred to and vested in said heirs and next of kin, and the final account of this defendant examined, settled and allowed, and this defendant so discharged as administrator, and long before the commencement of the above-entitled action, this defendant duly delivered all the property and effects in its possession or under its control to the persons entitled thereto, and that it is not administrator of the estate of said deceased and has not been, nor has it had in its possession or under its control any money, property or effects of said deceased or his said estate, since long prior to the commencement of the above-entitled action.

That by reason of the foregoing facts the plaintiff cannot maintain said action.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, or any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that said Sumner W. Matteson, being then a resident of the city of St. Paul in the State of Minnesota, on the 22nd day of July, 1895, died in said city of St. Paul, leaving real and personal property in said Ramsey county and elsewhere in the State of Minnesota; that this defendant was duly appointed administrator of his said estate on Sept. 3, 1895, by the probate court for said Ramsey county as in the complaint alleged and duly qualified as such administrator and assumed the duties thereof as hereinabove alleged, and that it has continually since said day remained within the State of Minnesota; that the above-entitled action was not commenced until subsequent to the 20th day of January, 1897, and the right to commence or maintain the above-entitled action was barred prior to that day.

Further answering and for a further separate defense herein (not waiving however any defense hereinbefore set out, nor any right to urge any of the facts hereinbefore set out to defeat said action) it alleges that at the time it was so appointed administrator of the estate of said deceased, as in the complaint alleged, and letters of administration by said probate court to it issued, said probate court in accordance with the statute in such case made and provided duly made an order limiting the time within which creditors might present claims against said deceased for examination and allowance to six months from the 3rd day of September, 1895, and

appointing the first Monday in April, 1896 (being the 6th day of April, 1896), as the time when, and the court-room of said court as the place where, said court would examine and adjust the claims and demands of all persons against said deceased, that notice was duly given to all creditors and all persons interested by publication of said order as by statute in such case made and provided; that notwithstanding said order and the due publication thereof the plaintiff and the holders of said notes wholly failed and neglected to present the notes sued on in the complaint, or any claim on account thereof, to said probate court or to commence any action thereon in any court within the time limited in said order, or at the time therein fixed for hearing such claims, or at any time until after final settlement of said estate and the account of this defendant as such administrator, and that by reason of the premises the above-entitled action is barred.

Further answering it admits that said Summer W. Matteson, deceased, signed the promissory notes described in paragraph or subdivision III of said complaint and endorsed his name on the back thereof, but it denies that said notes or either of them were ever by him sold, transferred or assigned to the First National Bank of Decorah, and denies that said First National Bank of Decorah ever purchased the said notes or any of them for value before maturity in the usual course of business and without any notice of any defense or defenses thereto; it denies that said notes or any of them were
11 ever negotiated by the deceased or delivered by him to said bank; it alleges on information and belief that said notes were signed and so endorsed by said deceased and left with James H. Easton, who was then and at all times in said complaint mentioned president of said bank, with the express understanding and agreement between said deceased and said James H. Easton and upon the express condition that said deceased should be liable for and held for the payment of only seven-sixteenths of each of said notes, and that said James H. Easton should be held liable for and should pay nine-sixteenths of each of said notes, and upon the express condition that before said James H. Easton should negotiate or make any disposition thereof he should by endorsement on the back of each of said notes gurantee the payment thereof or otherwise endorse the same so as to become jointly liable thereon with the said deceased; that as to nine-sixteenths of the amount of each of said notes the said deceased was only an accommodation maker or endorser for said James H. Easton, and each of said notes was as to nine-sixteenths thereof signed by the said deceased wholly without consideration; that if said notes or any of them were purchased or taken by said bank, they were purchased or taken by said bank from said James H. Easton with full notice and knowledge of the facts hereinbefore stated.

As to any other of the allegations contained in said paragraph or subdivision III of said complaint, this defendant has no knowledge or information sufficient to form a belief.

The defendant denies that as administrator of the said estate of said deceased it has or at the time said action was commenced it had

in its hands or under its control any property, money or effects whatever which belonged in his lifetime to the said Sumner W. Matteson, and denies that the estate of said Sumner W. Matteson is now in process of settlement in said probate court and has not been fully or finally settled, and denies that it has not been discharged and is still the administrator of the estate of said Sumner W. Matteson, deceased, and alleges that long prior to the commencement of said action the estate of said deceased had been fully and finally settled in said probate court and the final account of this defendant as such administrator examined, settled and allowed, (*au*) all of the property then remaining in the hands of this defendant by said court duly transferred, assigned and vested in the heirs and next of kin of said deceased, and this defendant as such administrator finally discharged; and it alleges that long prior to the commencement of said action this defendant had fully paid over and accounted for all moneys and delivered the possession of all property of said deceased remaining in its hands to the persons thereto entitled.

12 It admits that subsequent to the settlement of said estate in said probate court and the final settlement and allowance of its final account as administrator and its discharge as such administrator, and subsequent to the time when it had paid over and transferred and delivered to the persons thereto entitled to all money, property and effects of said deceased remaining in its hands, but not before that time, the plaintiff in said action demanded payment of said notes from this defendant, and admits that it has not paid any part of said notes.

Except as hereinabove expressly admitted, it denies each and every allegation, matter and thing in said complaint contained whether as therein stated or otherwise.

Further answering and for a counter-claim (but not waiving any defense hereinbefore set out) it alleges that after the signing of said notes and while the same were in the possession of said bank, and on or about January 2, 1896, the said bank wrongfully and unlawfully converted and appropriated to its own use certain bonds in the Iowa and Minnesota Investment Company belonging to the said deceased in his lifetime, and to which this defendant as administrator of said estate was then entitled that said bonds were of the value of two thousand dollars.

Wherefore defendant prays the plaintiff take nothing by this action, and that it may recover costs and its disbursements herein, and in case it should be adjudged that it is liable for the payment of any of the amounts claimed in said complaint, then that judgment be rendered only for the excess of the amount which shall be so found due over and above the said sum of two thousand dollars and interest.

EDMUND S. DURMENT,
Attorney for Defendant.

Office: 411 & 410 N. Y. Life bldg. Residence: 825 Osceola avenue, St. Paul, Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson, being first duly sworn on oath says that he is the president of Security Trust Company the defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge, except as to those matters which are therein stated on information and belief and as to those matters that he believes it to be true.

EDWARD J. HODGSON.

Subscribed and sworn to before me on this 15th day of February, A. D. 1897.

[NOTARIAL SEAL.] EDMUND S. DURMENT,
Notary Public, Ramsey County, Minn.

Answer. Filed February 27th, 1897. Henry D. Lang, clerk.

13 Thereafter and on the 20th day of March, 1897, the following stipulation extending time to reply was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

It is hereby stipulated and agreed by and between the parties and their respective attorneys, that the said petitioner may have to and inclusive of the 20th day of March, 1897, in which (*the*) file the reply to the answer of the defendant in the above-entitled cause.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Petitioner.

Stipulation. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 20th day of March, 1897, the following reply was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

For reply to the answer of the defendant in the above-entitled action, complainant denies each and every allegation, matter and

thing in said answer contained, and the whole thereof, except as admitted in the complaint herein, and as hereinafter admitted, qualified or specifically denied.

Petitioner admits that Sumner W. Matteson died at St. Paul, Minnesota, on or about the 22nd day of July, 1895, leaving a large amount of real and personal property in the county of Ramsey and elsewhere in the State of Minnesota, and that this defendant as administrator came into the possession of all of such personal property; admits that the action herein was not commenced until
14 the 22nd day of January, 1897; admits that the probate court of Ramsey county, Minnesota, made an order limiting the time within which creditors of said Matteson might present claims against said deceased, and that said notice was published in accordance with the order of said court. But petitioner specifically denies that said order, or said publication of notice to creditors was duly made, or was in compliance with the statute of the State of Minnesota, in such case made and provided, and charges the fact to be that, said order and said publication were improperly and illegally made; were not in conformity with the provision of the statute of the State of Minnesota, and were wholly null (—) void, and that the time limited by said court for the presentation of claims was less than the time allowed by the statute of the State of Minnesota for the presentation of such claims; admits that complainant did not present the notes described in said petition to said probate court within the time limited, and alleges that the complainant had no knowledge, information or notice that any proceedings whatsoever had been instituted or commenced in said probate court in the estate of said Sumner W. Matteson, deceased, until shortly before the commencement of this action.

Replying further and to the counter-claim alleged in the answer herein, petitioner denies each and every allegation in said counter-claim alleged and stated, and the whole thereof, and denies on information and belief that the bonds of the Iowa and Minnesota Investment Company referred to in said answer were of any substantial or material value whatsoever.

Except as herein expressly admitted, or in the complaint herein alleged, each and every allegation in said answer is denied.

Wherefore petitioner demands judgment against the defendant as in the complaint asked.

STRINGER & SEYMOUR,
Attorneys for Petitioner,
Nat. Ger. Am. Bank Bldg., St. Paul, Minnesota.

STATE OF MINNESOTA, }
County of Ramsey, } ss:

E. C. Stringer came before me personally and being first duly sworn, deposes and says that he is one of the attorneys for the petitioner in the above-entitled action and authorized to make this affidavit in his behalf. That he has read the foregoing reply and the same is true to the best of his knowledge, information and be-

lief, and the reason why this affidavit of verification is not
15 made by said petitioner is that said petitioner is absent from the county of Ramsey and State of Minnesota, wherein resides this affiant.

E. C. STRINGER.

Subscribed and sworn to before me this 19th day of March, 1897.
[NOTARIAL SEAL.] WILLIAM D. MITCHELL,
Notary Public, Ramsey County, Minnesota.

Reply. Filed March 20th, 1897. Henry D. Lang, clerk.

Thereafter and on the 18th day of January, 1899, the following stipulation of facts and waiver of jury trial was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

The parties to the above-entitled action have stipulated and agreed that for the purpose of this action the following facts shall be taken to be true, and shall be spread upon the records, and the said action be tried and determined on such stipulation of facts by the court without a jury, a jury being waived by the parties.

The allegations contained in subdivisions I, II, III of the petition or declaration in the above-entitled action are true (being all of said petition or declaration preceding the subdivision thereof marked IV), except that Sumner W. Matteson having died July 22, 1895, did not after that date reside in St. Paul, Minnesota.

Sumner W. Matteson, mentioned in the pleadings, was a resident and citizen of the State of Minnesota from prior to January, 1894, until his death, during that time residing at the city of St. Paul, in Ramsey county, Minnesota. He died at the said city of St. Paul intestate, a resident thereof, and leaving real and personal property there situate on July 22, 1895.

Thereafter such proceedings were duly had in the probate court for Ramsey county, Minnesota, that said Security Trust Company, mentioned in the petition or declaration was duly appointed administrator of the estate of said deceased, and letters (—) administration issued out of said court thereon to it as such administrator, and it duly qualified and entered upon its duties as such administrator on September 3, 1895.

16 Thereafter and on September 3, 1895, said court made and entered the following order with reference to filing claims against said deceased, viz:

STATE OF MINNESOTA, }
County of Ramsey, } ss:

Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

Letters of administration on the estate of Summer W. Matteson, deceased, late of the city of St. Paul, of county of Ramsey, and State of Minnesota, being granted to the Security Trust Company, a Minnesota corporation,

It is ordered, that six months be and the same is hereby allowed from and after the date of this order, in which all persons having claims or demands against the deceased are required to file the same in the probate court of said county, for examination and allowance, or be forever barred.

It is further ordered, that the first Monday in April 1896, at 10 o'clock a. m. at a general term of said probate court to be held at the court-house in the city of St. Paul, in said county, be and the same hereby is appointed as the time and place when and where the said probate court will examine and adjust said claims and demands.

And it is further ordered, that notice of such hearing be given to all creditors and persons interested in said estate by forthwith publishing this order once in each week for three successive weeks in the St. Paul Dispatch, a daily newspaper printed and published in said county.

Dated at St. Paul, this 3rd day of September, 1895.

By the court,

[L. S.] (Signed) G. WILLRICH,
Judge of Probate.

Said order was published in the same manner and length of time as required by statute for publication of an order limiting time for presenting claims against a deceased person for examination and allowance, it having been published in a legal newspaper in said county on September 10, 17, 24, 1895, and proof of such publication in due form was filed in said court in due season. The administrator duly filed an inventory of the estate of said deceased, and the same was duly appraised. Said defendant as such administrator received and took into its possession assets, funds and property of said estate largely in excess of all claims filed and allowed against said estate in said probate court, and the indebtedness in the complaint herein described, and the expenses of administration.

On March 31, 1896, the administrator filed its final account
17 of its administration, and petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto by law. Said petition was duly verified on March 31st, 1896, and is as follows:

"STATE OF MINNESOTA, } ss:
Ramsey County, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the judge of probate in and for said county:

The petition of the Security Trust Company as administrator of said estate (*respectively*) represents that it has fully administered said estate and paid all the debts allowed by the court against the estate of said deceased, and the expenses of administration, as will appear by its final account of its administration, and the vouchers therein referred to, and your petitioner would therefore pray that a time and place be fixed for examining and allowing said account, and for the assignment and distribution of the residue of said estate to the parties entitled thereto by law, and that notice thereof be given, agreeably to the statute in such case made and provided and as this court in its discretion may deem proper.

Dated at St. Paul, this 31st day of March, A. D. 1896.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *Pres't.*"

Said court made and entered an order for hearing said petition and notice of such hearing was given as by law required, and proof thereof filed in due season. Said court at the time fixed for such hearing heard the petition and examined said final account and made and entered a final decree distributing all the estate of said deceased in Minnesota to the widow and children of said deceased. The order allowing said final account was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the matter of the settlement of the final account of Security Trust Company as administrator of said estate.

Pursuant to the order of this court made and entered in said matter on the 27th day of April, 1896, the account of the Security Trust Company as administrator of said estate came on this day to be examined, and due proof of the publication of the notice of such examination in the matter required by said order of this court, being made and filed herein, and the said administrator appearing
18 by its secretary and treasurer, Charles D. Matteson, and its attorneys Bigelow and Taylor, whereupon the said probate court proceeded to examine the said administrator through its said secretary and treasurer upon oath, and the vouchers and accounts of the said administrator having been duly filed and examined.

And it appearing that the said administrator has accounted for every part of the estate of Sumner W. Matteson, deceased, and that no profit has been made by it of any increase thereof, and the ac-

counts of the said administrator having been finally settled and adjusted, and a summary statement of the same as finally settled allowed and adjusted by this court, being below and herewith recorded; on motion of said administrator by its said attorneys,

Ordered, that the said accounts be and the same are finally settled and allowed, as filed and adjusted in and by this court.

Summary Statement.

In same matter, same term.

The judge of probate of said Ramsey county, makes and records this summary statement of the final account of Security Trust Company as administrator of said estate of Sumner W. Matteson as adjusted, settled and allowed by said probate court.

The debit side of said account.....	$11,981.01
The credit " " " "	11,412.58
Balance due.....	$568.43

[L. S.] (Signed) G. WILLRICH,
Judge of Probate."

The final decree was as follows:

"STATE OF MINNESOTA, } ss:
County of Ramsey, }

In Probate Court, Special Term, April 27, 1896.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

It appearing to the court now here, on satisfactory proofs and the evidence, that the funeral charges, expenses of last sickness of said deceased and the cost of the administration of said estate have been fully paid and that all debts existing against said deceased, or allowed by the court pursuant to law, have also been fully paid and satisfied, and that said estate has been administered, as by the final account of the Security Trust Company, the administrator of said estate, heretofore duly audited and allowed by this court, pursuant to due notice given and served, will appear, (*preference*) being had thereto:

And it further appearing, that due notice of the application for this final decree in said matter, assigning the estate to the
19 person thereto entitled by law, has likewise been duly given and served pursuant to the law in such case made and provided and decided:

And it further appearing, that said deceased died intestate, and that the residue of said estate consists of the following-described real estate, situate, lying and being in the county of Ramsey and State of Minnesota, to wit: (Here is inserted the description of the real property in Minnesota.)

And it further appearing that the residue of the personal prop-

erty of said estate consists of the following personal property, to wit:

Stocks and Bonds.

Certificate No. 70 for 500 shares of capital stock in the Security Trust Company of St. Paul, Minn.

Certificate 211 for 10 shares of capital stock of First National Bank of Decorah, Iowa.

Certificate No. 5 for 362 shares; certificate No. 34 for 67⅔ and certificate No. 50 for 70⅔ shares of the capital stock of the Duluth Union Land Co., of St. Paul, Minnesota.

Certificates 61 *and* 70 inclusive, for 20 shares each, and bonds Nos 18, 19, 25, 26, 39, 40, 43, 44, 49, 50, 63, 64, 70, 71, 76, 77, 85, 86, 92, 93, 98, 99, 102, 103, 116, 117, of the Iowa and Minnesota Investment Company of Decorah, Iowa.

Certificate 58 for 2,178 shares of the capital stock of the Buffalo Land and Exploration Company of Duluth Minnesota.

Certificate 78 for 25 shares, stock of the Grand Opera House Company of Decorah, Iowa.

Bills Receivable.

Mortgage of Ingborg Casperson, dated —— — secured on lot 10 block 38, original town of Decorah.

Mortgage of M. O. Dalvey, dated June 16, 1893, secured on lot 3, block 2 Matteson's addition to Decorah.

Mortgage of Frank M. Hudges, dated November 15th, 1890, secured on an undivided ⅛ of lot seven block 19 in the original town of Decorah.

Note of W. B. Richard of New York *of New York* city, due Dec. 1st, 1893, for $1,000.

Cash on hand five hundred and sixty-eight dollars and forty-three cents (568.43).

And it further appearing, that the said Sumner W. Matteson left him surviving as his heirs-at-law and entitled to share in his said estate, his wife, Louise M. Matteson and his children, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson and Claire Louise Matteson and no others,

20 Now therefore, on the petition of the said Security Trust Company as said administrator, and pursuant to due notice and the law in such case provided.

It is ordered, adjudged and decreed, and this court, by virtue of the power and authority vested in the same by law, doth hereby order, adjudge and decree, that all and singular of the above-described real and personal estate, and all other of the estate of the deceased, in the State of Minnesota, be and the same is hereby assigned to and vested in the said Louise M. Matteson, Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, in the following shares and proportions, to wit:

To Louise M. Matteson, one undivided one-third (⅓) of all of said

real and (personal*ty*) property, to Herbert H. Matteson, Sumner W. Matteson, Charles D. Matteson, Roy G. Matteson, Max Matteson, and Claire Louise Matteson, each one undivided ninth (1/9) of all of said real and personal property, without prejudice, however, to any lawful conveyance of said real estate or any part thereof by said persons or any of them.

First. That it was the duly appointed, acting and

ments) and appurtenances thereunto belonging or in anywise appertaining to the above-named persons and their heirs and assigns forever.

By the court.

G. WILLRICH,
Judge of Probate."

[L. S.]

No order or decree has been entered in said probate court discharging the said administrator from its said trust other than the said order allowing its final account and said final decree which are above set out.

Thereafter and on November 23, 1896, said Security Trust Company filed the following petition, which was duly verified on November 20, 1896.

"STATE OF MINNESOTA, } ss.:
County of Ramsey, }

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

The petition of Security Trust Company, a corporation, respectfully shows to the court:

First. That it was the duly appointed acting and qualified (administ*ered*) of the estate of Sumner W. Matteson, deceased.

Second. That on the 27th day of April, 1896, said court made and entered its final decree in said estate, discharging petitioner as administrator, and assigning the property belonging to said estate to the persons by law entitled to the same.

21 Third. That in drawing said decree certain clerical errors were made, by reason of which certain parcels of real estate were therein erroneously described, and certain other parcels of real estate were omitted therefrom.

Fourth. That the said erroneous descriptions, with the corresponding proper corrections, are as follows:

(Errors and corrections are here set out *in* length in the original petition.)

Fifth. That the parcels and lots of real estate omitted from the said decree as aforesaid are as follows, to wit:

(Here the original petition sets out the particular descriptions of the omitted tracts.)

Wherefore, your petitioner prays that this court make and enter

an order amending and correcting the said final decree by changing the said erroneous descriptions to the proper and correct descriptions, as hereinbefore set forth, and by adding to the said decree the said omitted lots or parcels of real estate.

(Signed) SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, *President.*"

Thereafter on November 21, 1896, said court made and filed the following order amending said final decree:

"STATE OF MINNESOTA, }
County of Ramsey, } *ss:*

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

On reading and filing the petition of the Security Trust Company in the above-entitled matter, filed therein on the 21st day of November, 1896, and it appearing to my satisfaction, that the said petitioner was the duly appointed, acting and qualified administrator of the estate of Sumner W. Matteson, deceased, and that in drawing the final decrees made and entered in said above-entitled matter, on the 27th day of April, 1896, certain clerical errors were made by reason of which certain parcels of real estate were therein erroneously described and certain parcels of real estate were omitted therefrom, and that the said erroneous descriptions with the corresponding proper corrections are as follows:

(Here the particular errors and corrections are set out.)

And that the said parcels and lots of real estate omitted from the said decree as aforesaid, are as follows, to wit:

The undivided one-eighth (⅛) of the southeast one-quarter (S. E. ¼) of the southeast quarter (S. E. ¼) of section thirty-two (32) township forty-nine (49), range fifteen (15): also lots four (4) five (5) six (6) and ten (10) in block (1) lots five (5) six (6) seven (7) and eight
22 (8) in block three (3): lots eleven (11) and twelve (12) in block fourteen (14) and lot fifteen (15) in block seventeen (17) all of the West End addition to Duluth, according to the recorded plat thereof, of record and on file in the office of the register of deeds in and for said county of St. Louis.

It is ordered, that the said final decree be and the same hereby is amended and corrected by changing the said erroneous descriptions to the correct descriptions, as hereinbefore set forth, and by adding to the said decree the lots and parcels of land omitted therefrom as hereinbefore set forth.

Dated this 21st day of November, A. D. 1896.

G. WILLRICH,
[L. S.] *Judge of Probate.*"

That the major portion of the omitted descriptions were not contained in the inventory filed.

That on or about the — day of November, 1895, said administrator filed in said probate court its petition as follows:

"STATE OF MINNESOTA, }
County of Ramsey, } ss:

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

To the Honorable Gebhard Willrich, judge of the above-named court:

The petition of the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, respectfully shows to the court:

That it is a duly acting and (qualif*ying*) administrator of the estate of Sumner W. Matteson, deceased; that said Sumner W. Matteson in his lifetime entered into a contract with one James H. Easton, bearing date May 15th, 1894, in which it was recited that said Matteson was indebted to said Easton in the sum of sixteen thousand six hundred and ten dollars and seventy-five cents ($16,610.75), which sum said Matteson therein agreed to pay to said Easton, with interest thereon at eight per cent. (8 per cent.) per annum until paid.

It was further recited therein that said Matteson had, previous to the execution of said contract, executed and delivered to the order of said Easton his certain promissory notes, amounting in the aggregate to the sum of thirty-seven thousand six hundred dollars ($37,600), which notes were delivered for the purpose of aiding and carrying the stock of a certain land (*delivered for the purpose of aiding and carrying the stock of a certain land*) purchase, in which the said Easton and said Matteson together with two other parties,
23 were jointly interested; that by the terms of said contract said Matteson delivered to said Easton, as security for the indebtedness on said contract, fifteen thousand dollars ($15,000) of 5 10 bonds of the Iowa and Minnesota Investment Company of Decorah, Iowa, and twenty-five thousand dollars ($25,000) of the stock of said company, and authorized said Easton to hold said bonds and stocks as security for said Matteson's indebtedness on said contract, and to rehypothecate the same for the purpose of floating the said notes theretofore delivered, and it was further agreed that when the amount due on said contract should be fully paid by said Matteson to said Easton, he would return all such securities and all of the said notes and any renewals thereof duly cancelled.

Your petitioner further alleges that it is informed and believes that said Easton has transferred said notes, in pursuance of said contract, to various innocent holders and has rehypothecated various amounts of said securities to secure their payment, but your petitioner is unable to state the exact amount of said notes which said Easton has so transferred or the amount of such securities so rehypothecated.

That since the execution of said contract there has been paid on account of the sum due thereon the sum of two thousand dollars ($2,000) paid on the 16th day of November, 1894, and the sum of four hundred and seventy dollars and ninety-two cents ($470.92)

paid on the 1st day of August 1895, and no more; and that of the notes so transferred and delivered, as aforesaid, there are now outstanding an amount equal to the sum of thirty-five thousand six hundred dollars ($35,600) and that the said estate of Sumner W. Matteson is liable upon the whole amount thereof. That the holders of the said notes, so outstanding, threaten to file their claim for the full amount against said estate, and to convert the securities now held by them for the payment of said notes; that the said securities are worth much more than the amounts of the notes which they are pledged to secure, and that if the said holders of said notes convert the same, as they threaten to do, and file their claims against the said estate for the balance due on said notes, after so applying the said securities, it will result in great loss and damage to said estate.

Your petitioner further shows that desiring to avoid the sacrifice of any of the said securities and the payment by the said estate of the face value of all of the said notes, as aforesaid, it has entered into an agreement with the said James H. Easton, a copy of which is hereby attached and marked Exhibit "A" and made a part thereof.

That it believes that said Easton is financially able to carry
24 out all of the terms of said agreement, and that it is the best agreement of settlement which could be made with said Easton.

Your petitioner further shows that the inventory value of the said estate amounts to the sum of one hundred and ninety-two thousand two hundred and forty dollars ($192,240). That the amount of unsecured claims and indebtedness against said estate amounts to the sum of eighteen thousand one hundred and nineteen dollars and eighty-six cents ($18,119.86) and no more. That the secured indebtedness against the said estate, save and except the indebtedness evidenced by the notes hereinbefore described, amounts to the sum of thirty-five thousand six hundred and thirty-three dollars and forty cents ($35,633.40). That the last-named indebtedness is amply secured, and the holders thereof will file no claims against the said estate; that the said estate has an amount of cash on hand equal to the sum of ten thousand two hundred and fifty-nine dollars and two cents ($10,259.02) and that all of the funeral expenses and the (espenses) of the last illness of the deceased have been fully paid.

Wherefore, your petitioner prays the order of this court, allowing it to pay over to said Easton, out of the cash in hand belonging to said estate, the sum called for by the terms of Exhibit "A" or if the terms (—) said contract do not meet with the approbation of your honor, that you will direct petitioner how to proceed in this matter.

SECURITY TRUST COMPANY,
As Administrator of the Estate of Sumner W. Matteson,
By EDWARD J. HODGSON, *President,*
By CHAS. D. MATTESON,
Secretary, Petitioner.

Thereupon the said court entered the following order:

"STATE OF MINNESOTA, }
County of Ramsey, } ss:

In Probate Court.

In the Matter of the Estate of SUMNER W. MATTESON, Deceased.

On reading and filing of petition of the Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, asking the authority of this court to pay the secured claim of James H. Easton, without the same being duly filed and approved in the said court against said estate, and it appearing to the court after hearing the evidence and after due consideration thereof that it is for the best interests of the said estate to pay the said claim of the said Easton, according to the terms of the contract set forth in said petition, and that the said contract be duly confirmed by this court, and the said administrator authorized to carry out the terms thereof.

25 Now therefore, said administrator is duly authorized and empowered to proceed and carry out the terms of the said contract with said Easton and to pay over to him forthwith, on his complying with the terms of said contract out of the cash on hand belonging to the said estate, the sum provided to be paid (*he*) said contract, and all further sums provided.

Said administrator is also further authorized to pay all the accruing interest on any and all secured claims against the said estate, whether set forth in the said petition or otherwise, at the times and in the manner provided for the payment thereof; such payments are authorized however, only on condition that said administrator retain sufficient assets with which to pay all the claims which may be filed and proved against said estate.

Dated this 10th day of December, 1895.

[L. S.] G. WILLRICH,
Judge of Probate."

Thereupon the following contract was executed and delivered by it, the same being Exhibit "A" referred to in the foregoing petition:

This agreement, made and entered into this 19th day of November, 1895, by and between James H. Easton party of the first part, and the Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, party of the second part, witnesseth,

Whereas, the said Sumner W. Matteson, deceased, did in his lifetime enter into a contract with said party of the first part on the 15th day of May 1894, in which it was recited that the said Matteson was indebted to the said party of the first part in the sum of sixteen thousand six hundred and ten dollars and seventy-five cents ($16,610.75), *in* which said (sum) said Matteson promised to pay to said party of the first part with eight per cent. (8 per cent.) interest thereon, payable semi-annually and that said Matteson had, from time to time, executed and delivered to the said party of the first part his certain promissory notes of various dates and amounts, and which were in all for the sum of thirty-seven thousand six hundred

dollars ($37,600) which said notes were particularly described in said contract; and in which it was further recited that said notes were delivered to said party of the first part by said Matteson for the purpose of raising money to aid in carrying the stock of a certain land company, referred to in said contract and known as the
Iowa and Minnesota Investment Company of Decorah, Iowa,
26 on which the said party of the first part the said Matteson and others were jointly interested and

Whereas, by the terms of said contract said Matteson (dul*l*) transferred to said party of the first part, as security for the payment of said sum of sixteen (—) six hundred and ten dollars and seventy-five cent- ($16,610.75) certain bonds and stocks of the aforesaid investment company, to wit:

Thirteen thousand dollars ($13,000) in 5/10 bonds of the Iowa and Minnesota Investment Company of Decorah, Iowa, and twenty-five thousand dollars ($25,000) in the stockholders' shares in said investment company, and authorized said party of the first part to rehypothecate the said securities for the purpose of floating and putting in circulation the said notes, and

Whereas, the said party of the first part has endorsed, transferred and placed the said notes, and has pledged and given as security for the payment of the same, various amounts of the said bond- and stocks so that there is now outstanding of the said notes so endorsed, transferred and placed the sum of thirty-five thousand six hundred dollars ($35,600) and

Whereas, since the execution of said contract there has been paid upon the account of the same the sum of two thousand dollars ($2,000), paid on the 16th day of November, 1894, and the sum of four hundred and seventy dollars and ninety-two cents ($470.92) paid on the first day of August, 1895,

Now, therefore, in consideration of the foregoing, and of the sum to be paid, and the mutual covenants and conditions to be performed, as hereinafter set forth, it is hereby mutually stipulated and agreed by and between the said parties of the first and second part-,

First. That the said party of the second part shall pay in hand to the said party of the first part upon account of the sum due under the said contract a sufficient sum of money to reduce the balance remaining due and unpaid thereon to the sum of seven thousand dollars ($7,000) with interest paid in full to January 1st, A. D. 1896, provided, however, that (*if*) the time (*of*) said payment is made the said party of the first part shall call in cancel and deliver up to the said party of the second part, all of the said outstanding notes, except such an amount thereof as shall be equal in their face value in the aggregate to the sum of sixteen thousand dollars ($16,000).

It is further agreed that the said payment shall be made at the
First National Bank of Decorah, Iowa, within ten days after
27 this agreement shall be confirmed by the probate court as hereinafter provided, and at which time said notes shall be cancelled and surrendered.

Second. It is further agreed by and between the parties to this agreement that at the time said payment shall be made and said

notes surrendered and cancelled, as aforesaid, the time for payment of the balance then remaining due upon the said contract, to wit: the sum of seven thousand dollars ($7,000) shall be extended as follows, to wit: one-third (⅓) thereof to be paid on or before January 1st, 1897, one-third (⅓) thereof to be paid on or before July 1st, 1897, and the balance of one-third (⅓) to be paid on or before January 1st, 1898; all of said deferred payments to bear interest at the rate (—) eight per cent. (8 per cent.) per annum, payable semi-annually, from and after January 1st, 1896.

That upon the payment of each of the said deferred installments to become due upon the said contract, as hereinbefore provided, or upon the payment of any part thereof, said party of the first part shall call in, cancel by proper endorsement or deliver up to the said party of the second part, an amount of the said notes then remaining outstanding, equal in their face value in the aggregate to double the amount of the payment which shall then be made.

Third. It is further agreed by and between the parties to this agreement, that upon the full and final payment of the entire sum due upon said contract, as aforesaid, the said party of the first part shall deliver up to the said party of the second part all of the said stocks and bonds, together with such of the said notes as shall then be outstanding.

Fourth. It is further agreed upon the part of the said party of the first part that if the said party of the second part shall make all of the payments upon said contract, as hereinbefore provided, that he will secure such renewals or extension of time for payment of the notes which shall be left outstanding as hereinbefore agreed.

Fifth. It is further agreed by and between the parties to this agreement that the same shall not become operative until the Honorable Gebhard Willrich, judge of probate court of Ramsey county, Minnesota, shall have passed upon this contract, and made an order directing the said party of the second part to carry out the same according to its terms, and said party of the second part agrees to bring said contract before the said probate court with all possible speed.

28 In witness whereof, the said parties of the first and second part- hereunto set their hands and seals this 19th day of November, 1895.

SECURITY TRUST COMPANY,
As Administrator of Sumner W. Matteson's Estate,
By EDWARD J. HODGSON, *Pres't.*
JAMES H. EASTON. [SEAL.]

In presence of—
CARL TAYLOR.
J. V. PARKER.

The following endorsements were subsequently made on said contract:—

"This memorandum and receipt, made this 18th day of February, A. D. 1896, witnesseth:

First. That there has been paid to within-named Easton the sum of $9,159.51 received by him as of date Jan. 1, 1896, leaving a balance thereon remaining unpaid in the sum of $7,000.00 January 1st, 1896.

Second. That there has been cancelled and surrendered to the executors of said S. W. Matteson, deceased, by said Easton, of the notes herein referred to, the sum of $19,600.00, leaving of the notes herein referred to, as remaining outstanding and unpaid the sum of $16,000.

Third. That an endorsement has this day been (*this day*) made on the original contract herein referred to bearing date May 15, 1894, in accordance with the foregoing.

Witness our hand- in duplicate this 18th day of Feb'y, A. D. 1896.

JAMES H. EASTON."

Continuously from and prior to January 1, 1895, said James H. Easton was president and E. R. Baker hereinafter mentioned was cashier of said bank, and actively engaged in the management of its affairs. As early as September 1, 1895, all of the officers and directors of said bank knew of the death of said Sumner W. Matteson and that he died at St. Paul, in the State of Minnesota. The said receiver did not have such knowledge, however, until about December 20, 1896. Some of the creditors of said bank had such knowledge as early as September 1, 1895, and the other creditors of said bank had not such knowledge prior to January 1, 1897. The directors of said bank never at any of their meetings after the death of said Matteson took any action with reference to the said indebtedness of said Sumner W. Matteson, nor with reference to proving the same as a claim against the estate of said Matteson, in Minnesota, and it does not appear from the records of their said meetings that the said indebtedness was mentioned at any such meeting, though other indebtednesses of other persons it appears from said records were considered and acted upon by the directors.

29 Said James H. Easton knew of the pendency of said administration in the said probate court in Ramsey county, Minnesota, from about Nov. 1, 1895.

Said Sumner W. Matteson at his death had a balance of a deposit account, with said bank. On September 6, 1895, said administrator drew its check for said balance and deposited it in the Second National Bank of St. Paul, and it was transmitted for collection through a bank in Chicago but when presented for payment, payment was refused, the check was protested for non-payment and returned with a certificate of protest. Said check and certificate of protest so returned were as follows:

(*Check.*)

ST. PAUL, MINN., *Sep.* 6, 1895.

First national bank, Decorah, Iowa,

Pay to F. D. Montfort cashier, or bearer $170.92 four hundred seventy and $\frac{92}{100}$ dollars, in current funds.

SECURITY TRUST COMPANY,
As Administrator of Sumner W. Matteson Estate,
By CHAS. D. MATTESON,
Treas. pro Tem.

Endorsed across the face of said check in red ink was the following:

"Protested for non-payment Sept. 10, '95. Otto O. Arnison, N. P."

Among the endorsements on back of said check was the following:

"For deposit to credit of Security Trust Company. S. W. Matteson, treas."

(*Protest.*)

"THE UNITED STATES OF AMERICA, }
State of Iowa, Winneshiek County. }

To all whom the same doth or may in anywise concern:

Know ye, that I, Otto O. Arnison, a notary public in and for the county and State aforesaid, commissioned under the great seal of said State, and duly qualified and sworn, and residing in the town of Decorah, in said county, on the tenth day of September, 1895, at the request of the First National Bank of Decorah, Iowa, did present the original check hereunto annexed to the First National Bank of Decorah, Iowa, and demanded payment of the same, which was refused,

Whereupon, I, the said notary public, at the request aforesaid, did protest and by these presents solemnly and publicly protest, as well against the drawer and endorsers of the said check as against all others whom it doth or may concern, for exchange and all costs, damage, and interest already incurred and to be hereafter incurred for want of pay't of the same.

And further certify that on the 10 day of Sept., 1895, due notice of the presentment and protest, signed by me, was given by me to the drawer and endorsers of the said check by depositing in the post-office at Decorah, Iowa, prepaying the postage thereon, directed as follows:

Security Trust Company, adm'r, St. Paul, Minn.

F. D. Montfort, cas., or D. A. Montfort, pres't, St. Paul, Minn.

John B. Meyer, cash., Chicago.

Each of the above-named places being the reputed place of residence of the person to whom notice was so addressed, and the post-office nearest thereto.

This done and protested in the town of Decorah, aforesaid, the day and year above written. *In testimonium veritatis.*

OTTO O. ARNISON.

[SEAL.] *Notary Public.*

Indorsed: Certificate of protest. Security Trust Company, adm'r. Check on First national bank, Decorah, Iowa. Protest fees waived. Otto O. Arnison, notary public, Decorah, Iowa.

The following notice of protest was also sent to said administrator:

"First National Bank of Decorah.

$470.92. DECORAH, IOWA, *Sept.* 10, 1895.

SIR: Please take notice that a check dated September 6, 1895, for four hundred seventy and $\frac{92}{100}$ dollars payable at — drawn by Security Trust Company, adm'r, in favor of F. D. Monfort, cas., drawn on First national bank, Decorah, made by —— —— and — by you was this day protested for non-payment, the same having been duly presented and payment demanded, which was refused. The holder thereof looks to you for payment.

Yours respectfully, OTTO O. ARNISON,

[NOTARIAL SEAL.] *Notary Public.*

To Security Trust Company, adm'r S. W. Matteson's estate, St. Paul, Minn."

On February 18, 1896, a payment of eight hundred dollars ($800) was made to said bank and a receipt therefor given signed by said Baker as cashier, which receipt and the endorsement thereon is as follows:

31 First National Bank of Decorah, Iowa.

DECORAH, IOWA, *Feb'y* 18, *A. D.* 1896.

Received from the Security Trust Company of St. Paul, Minn., as administrator of S. W. Matteson, deceased, by J. H. Easton, eight hundred dollars, which said sum had been this day endorsed on a note of No. 29144 of said S. W. Matteson held by this bank, dated Oct. 19, '94, due in six months payable to the order of said Matteson and endorsed by him to this bank.

$800. E. R. BAKER, *Cas.*

Endorsed on back of said receipt was the following:

"Note memo. made 2, 18, '96.—The within-mentioned payment is made to apply in part satisfaction of contract made Nov. 19, '95 by and between the executors of said S. W. Matteson's estate and the within-mentioned Jas. H. Easton.

Witness my hand.

JAMES H. EASTON."

No steps were ever taken by said bank (*or by said bank*), or by any one in its behalf to file its claim in the said probate court, nor

to commence any action in any State or United States court in the State of Minnesota, to prove its claim as against the deceased or to recover on account of any of said notes until January 22, 1897, when it commenced this action.

Said receiver caused said notes to be presented to Security Trust Company in January, 1897, before the commencement of this action, and demanded that it pay the same out of the estate of said deceased, and payment was refused. No part of said notes has been paid except as alleged in the petition or declaration. Said administrator as early as Sept. 15, 1895, knew that said bank held said notes and that they were unpaid.

The Security Trust Company did not at any time make any written assignment or transfer of any of the property, described in said final decree to any person named as a distributee in said final decree, except the certificate of stock of the Duluth Union Land Co. described in said decree of distribution, which said stock was on the 23rd day of December, 1896, assigned in writing by said administrator. Such assignment was on December 23, 1896, made on the back of said certificate and signed "Security Trust Company as administrator of the estate of Sumner W. Matteson, deceased," at the request of said Chas. D. Matteson for the reason that when said Matteson presented said certificate to the secretary of said Duluth Union Land Co. and requested that certificates in lieu thereof should be issued to the distributees named in said final decree said secretary refused to make such transfer unless such assignment should be endorsed on said stock.

32 But within a few days after said final decree had been made and long before December 1, 1896, said Charles D. Matteson, who was secretary and treasurer of Security Trust Company, at all times herein mentioned, and also one of the distributees named in said final decree, removed all securities and papers in possession of said Security Trust Company as such administrator from the files of said Security Trust Company where they had been kept by it as such administrator, and placed them in a box or receptacle which he kept, and for a long time before that time had kept in the vault of said company for his personal papers, and papers in his personal possession, except certain stocks and securities which Security Trust Company as collateral security for indebtedness owed to it by said Sumner W. Matteson held prior to his death, and which it has continued to hold as such collateral to the present time, such indebtedness still remaining unpaid. The book in which Security Trust Company kept entries of the proceedings in the probate of said estate, was in the usual course of business, shortly after the entry of said final decree, and long before December 1, 1896, written up, and the following entries made after the printed words on the page of said book containing entries relative to said estate viz:

Application for discharge (in print). March 31, 1896, (in writing.) Discharged (in print) April 27, 1896, (in writing.)

Red-ink lines followed on the page so ruled as to leave no space for further entries on said page.

The cash on hand at the time of filing the final account was paid

out by Security Trust Company under the directions from said Chas. D. Matteson for taxes and other expenses relating to property of said distributees, and early in June, 1896, it paid to said Chas. D. Matteson by its check, a balance of less than fifty dollars which remained unexpended according to the account kept on its books in which account was entered the moneys it had received and disbursed as such administrator, and said account was then closed on its books. All such properties thereafter remained in the said private receptacle of said Chas. D. Matteson, except as he may have delivered them to persons other than the Security Trust Company, and written assignments or conveyances of all the said property (except certificates of capital stock of First National Bank of Decorah) were made by the distributees to the Matteson estate incorporated (a corporation organized under the laws of Minnesota) prior to Dec. 15, 1896. Said Chas. D. Matteson was secretary and treasurer of said Matteson estate, incorporated, at all times after April 26, 1896.

On April 6, 1896, Warner, Richardson & Lawrence filed in said probate court their duly verified claim against said estate for
33 one hundred nine and 20/100 dollars ($109.20) on which is endorsed in handwriting of said Chas. D. Matteson the following: "We allow the within claim this 20th day of May, '96. Security Trust Company, by Chas. D. Matteson, sec'y;" and it was paid in full.

Edward J. Hodgson and Chas. D. Matteson were respectively president and secretary and treasurer of said Security Trust Company at all times herein mentioned and they had exclusive supervision and management of said administration for said company, but said Chas. D. Matteson principally attended to all the details thereof.

Said deceased resided in the State of Iowa until November, 1891, and from that date until his death at St. Paul, Minnesota.

Said Chas. D. Matteson was appointed administrator of the estate in Iowa by said Iowa court above mentioned in September, 1895.

STRINGER & SEYMOUR,
Plaintiff's Attorneys.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation of facts. Filed, Jan. 18th, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on the 5th day of January, 1897, the following stipulation placing cause on calendar was filed in the clerk's office of said court in words and figures following, to wit:

United States Circuit Court, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

It is hereby stipulated that the above-entitled cause be placed on the calendar for the January A. D. 1899 term of said court, without further notice.

STRINGER & SEYMOUR,
Attorneys for Plaintiff.
EDMUND S. DURMENT,
Attorney for Defendant.

Stipulation. Filed January 5, 1899. Henry D. Lang, clerk.

34 Thereafter and on the 17th day of April, 1899, the following findings and order for judgment was filed in the clerk's office of said court in words and figures following, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased.

This case being regularly on the docket, came on for hearing at the January A. D. 1899 term of this court holden at St. Paul, in said third division of said district, and trial by jury having been duly waived by respective parties it was tried by the court without a jury on Wednesday, April 5, 1899, in said term; the plaintiff appearing by Stringer and Seymour, his attorneys, and the defendant by Edmund S. Durment, its attorney. And now having heard the arguments of counsel for the respective parties, and duly considered the pleadings and the stipulation of facts presented and received in evidence, it is found by the court that the plaintiff, as receiver of the First National Bank of Decorah, Iowa, is entitled to recover of the defendant The Security Trust Company of St. Paul, as administrator of the estate of Summer W. Matteson, deceased, the amount claimed by said plaintiff in his complaint herein with costs, to be paid and enforced out of the property and effects of the intestate Summer W. Matteson, deceased; said judgment to be duly certified by this court to the probate court of Ramsey county, Minnesota, as a claim duly proved, established and allowed against the said estate of Summer W. Matteson, deceased.

The clerk will from said complaint compute the amount which

the plaintiff is, at the date hereof, entitled to recover under the finding, and enter judgment accordingly.

WM. LOCHREN, *Judge*.

April 15, 1899.

Findings and order for judgment. Filed, April 17, 1899. Henry D. Lang, clerk.

Thereafter and on the 17th day of April the following stipulation as to costs was filed in the clerk's office of said court in words and figures following, to wit:

35 Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa, Plaintiff,

vs.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

Plaintiff's Costs and Disbursements.

Docket fee	$10.00
U. S. marshal's fee	2.06
Clerk's fee, to be added, plaintiff's fees	11.95
	$24.01

It is hereby stipulated and agreed that the foregoing costs may be taxed and allowed by the clerk of said court and inserted in the judgment in the above-entitled cause, without further notice.

EDMUND S. DURMENT,
Attorney for Defendant.
STRINGER & SEYMOUR,
Attorneys for Plaintiff.

Stipulation on costs. Filed April 17th, 1899. Henry D. Lang, clerk.

And thereafter, on the same day, the following order was entered of record in said cause, judgment for plaintiff, in words and figures following, to wit:

United States Court for the District of Minnesota.

Term Minutes, January Term, A. D. 1899.

APRIL 17TH, 1899.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Iowa,
vs.
THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased. } E. Law. 1164.

This cause having been heretofore tried by the court without a jury and the court having this day filed its findings,

Therefore it is considered, ordered and adjudged in accordance therewith that the plaintiff herein, William H. Dent, as receiver of the First National Bank of Decorah, Iowa, do have and recover of and from the defendant The Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson, deceased, the sum of thirteen thousand five hundred eleven dollars and
36 five cents ($13,511.05) the amount claimed in the complaint with interest to this date, together with the sum of twenty-four dollars and one cent ($24.01) the costs which the plaintiff is entitled to recover in this action in accordance with the stipulation duly signed by the attorneys for the respective parties herein and this day filed, amounting in the aggregate to the sum of thirteen thousand five hundred and thirty-five dollars and six cents ($13,535.06) and that said sum be paid and enforced out of the property and effects of the intestate Sumner W. Matteson, deceased.

Ordered further that this judgment be duly certified by this court to the probate court of Ramsey county as a claim duly approved, established and allowed against the estate of Sumner W. Matteson, deceased.

Judgment-roll signed this 17th day of April, A. D. 1899.

Damages	$13,511.05
Costs	24.01
Total	$13,535.06

HENRY D. LANG, *Clerk*,
By LOUISE B. TROTT, *Deputy*.

Judgment-roll. Filed April 17, 1899. Henry D. Lang, clerk. By Louise B. Trott, deputy.

Thereafter and on October 14th, 1899, the following assignment of errors was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Defendant.

The defendant in the above-entitled action says that in the record and proceedings in said action, and also in the rendering of the judgment therein there is manifest error in the particulars hereinafter specified, and assigns as error committed by the court in the trial of said cause for which it asks a reversal on error, the following:

1. The court erred in granting judgment in favor of the petitioner on the pleadings and the agreed facts stipulated by the parties and spread upon the records.

2. The court erred in not ordering judgment on the pleadings and agreed facts stipulated by the parties and spread upon the records in favor of the defendant.

37 3. The judgment is not supported by the facts so stipulated and agreed upon in writing and filed and spread upon the records in said action.

4. The pleadings and the facts therein set forth and the agreed facts stipulated and filed in said action and spread upon the records (upon which said judgment is based) are not sufficient to authorize the entry of said judgment or to support the judgment so rendered and entered.

5. The agreed facts stipulated in writing and filed in said action and spread upon the records are not sufficient to authorize the entry of said judgment or to support the said judgment so rendered and entered.

Wherefore the said defendant, the plaintiff in error, prays that said judgment be reversed.

EDMUND S. DURMENT,
Attorney for Defendant, Plaintiff in Error.

Indorsed: Assignment of errors. Filed October 14th, 1899. Henry D. Lang, clerk.

And on the same day, the following bond on appeal was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Know all men by these presents, that we, Security Trust Company, defendant in the above-entitled action, as principal, and C. E. Dickerman and Chas. D. Matteson as sureties, are held and firmly bound unto William H. Dent, as receiver of the First National Bank of Decorah, the plaintiff in the above-entitled action, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, his successors in office, or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and the successors of the Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 14th day of October, A. D. 1899.

The condition of this obligation is such, that whereas a final
38 judgment was rendered and entered in the above-entitled action in favor of the plaintiff and against the said defendant on the 17th day of April, 1899, and the said defendant has duly made an assignment (*or*) errors and is about to apply for a writ of error to issue in said court in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the United States circuit court of appeals for the eighth judicial circuit:

Now, therefore, if said writ of error shall be allowed and said defendant shall prosecute its writ to effect, and if it fail to make its plea good shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said defendant has caused this bond to be executed in its corporate name and its corporate seal to be thereto affixed, and the said sureties have thereto set their hands and seals this 14th day of October, A. D. 1899.

SECURITY TRUST COMPANY.
By EDWARD J. HODGSON, *President*,
By CHAS. D. MATTESON, *Secretary*.
C. E. DICKERSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
W. J. DESMOND.
H. A. PRESLER.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 14th day of October, A. D. 1899, came (*on*) before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known and who being by me severally duly sworn on oath says, that he, the said Edward J. Hodgson, is the president and he, the said Charles D. Matteson, is the secretary, of said Security Trust Company, a corporation, and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto attached is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared C. E. Dickerson and Chas. D. Matteson, two of the persons who executed the foregoing bond as sureties thereon, to me personally known to be the same persons described in and who executed the foregoing bond as sureties, and each severally acknowledged the same to be his own free act and deed.

39 Witness my hand and official seal this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minn.

Bond on appeal.

I hereby approve of the within bond and the sureties thereon. Dated October 14th, 1899.

WALTER H. SANBORN,
Circuit Judge.

Filed October 14th, 1899.

HENRY D. LANG, *Clerk.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

C. E. Dickerson and Chas. D. Matteson, came before me personally on this 14th day of October, A. D. 1899, and being severally and duly sworn each for himself doth depose and say, that he is the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

C. E. DICKERSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me on this 14th day of October, A. D. 1899.

[NOTARIAL SEAL.] W. J. DESMOND,
Notary Public, Ramsey County, Minn.

And on the same day the following petition for writ of error was filed in said cause, to wit:

Circuit Court of the United States, District of Minnesota, Third Division.

WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Petitioner,
vs.
SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Defendant.

Now comes the defendant above named and says, that on the 17th day of April, 1899, the above-entitled court entered judgment in the above-entitled action in favor of the plaintiff against the defendant, which judgment was on the merits and is a final judgment, and in which judgment and proceedings prior thereto in said action, certain errors were committed to the prejudice of the said defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

Wherefore the said defendant prays that a writ of error may issue in this behalf to the United States circuit court of appeals for the eighth circuit for the correction of the errors so complained of, and that a transcript of the records, proceedings and papers in said cause, duly authenticated, may be sent to said circuit court of appeals.

EDMUND S. DURMENT,
Attorney for Defendant.

Writ of error is allowed as prayed for in the foregoing petition, on the 14th day of October, 1899.

WALTER H. SANBORN,
Circuit Judge for the United States Circuit Court for the District of Minnesota, Third Division.

Petition for writ of error. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following writ of error was issued in said cause, to wit:

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Minnesota, third division, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the January term, 1899, thereof, between William H. Dent, as receiver of the First National Bank of Decorah, plaintiff, and Security Trust Company of St. Paul as administrator of the estate of Sumner W. Matteson, deceased, defendant, a manifest error hath happened, to the great damage of the said Security Trust Company of St. Paul, as administrator of the estate of Sumner W. Matteson deceased, as — its complaint appears. We being willing that error, if any hath been, should be duly corrected and full and speedy

justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States circuit court of appeals for the eighth circuit, together with this writ, so that you have the said record and proceedings aforesaid at the city of St. Louis, Missouri, and filed in the office of the clerk of the United States circuit court of appeals, for the eighth circuit, on or before the 12th day of December, A. D. 1899, to the end that the record and proceedings aforesaid, being inspected, the United States circuit court of appeals may cause further to be done therein to cor-
41 rect that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourteenth day of October, A. D. 1899. Issued at office in St. Paul, Minnesota, with the seal of the circuit court of the United States for the district of Minnesota, third division.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for the District of Minnesota.

Allowed by
WALTER H. SANBORN, *Judge.*

UNITED STATES OF AMERICA, } ss:
District of Minnesota, Third Division, }

In obedience to the command of the within writ, I herewith transmit to the United States circuit court of appeals, a duly certified transcript of the record and proceedings in the within-entitled cause, with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of the circuit court of the United States for the district of Minnesota, third division.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG,
Clerk of the Circuit Court of the United States of America for District of Minnesota.

Entered 1164. E. law. Filed October 14th, 1899. Henry D. Lang, clerk.

And thereafter and on the same day the following citation was issued and returned on the 16th day of October, 1899, with due proof of service thereon, to wit:

The United States of America to William H. Dent, as receiver of the First National Bank of Decorah:

You are hereby cited and admonished to appear in the United States circuit court of appeals for the eighth circuit at the city of St.

Louis, Missouri, on the 12th day of December, A. D. 1899, pursuant to a writ of error filed in the office of the clerk of the United States circuit court for the district of Minnesota, third division, wherein Security Trust Company (defendant in an action brought by you against Security Trust Company, as administrator of the
42 estate of Sumner W. Matteson, deceased), is plaintiff in error, and you are defendant in error, and show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Walter H. Sanborn, judge of said circuit court, this 14th day of October, A. D. 1899.

WALTER H. SANBORN,
Judge of United States Circuit Court,
Eighth Judicial Circuit.

Entered 1164 E. law. United States circuit court, district of Minnesota. Third division. William H. Dent, as receiver, etc., petitioner, *vs.* Security Trust Company, as administrator, etc., defendant. Citation. Due service of within citation is hereby admitted Oct. 16 1899. Stringer & Seymour, Edward C. Stringer, McNeil V. Seymour, attorneys for plaintiff. Filed October 16th, 1899. Henry D. Lang, clerk.

UNITED STATES OF AMERICA:

Circuit Court of the United States, District of Minnesota, Third Division.

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable, the United States circuit court of appeals for eighth circuit, that the foregoing, consisting of 69 pages, numbered consecutively from 1 to 69, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment and all other proceedings in said cause and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return, that I have annexed to said transcript, and included within said paging, the original citation, together with the proof of service thereof.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

In witness whereof, I have hereunto set my hand, and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 9th day of November, A. D. 1899.

HENRY D. LANG, *Clerk.*

(Cancelled 10c. U. S. rev. stamp.)

Filed Nov. 16, 1899.

JOHN D. JORDAN, *Clerk.*

43 (*Appearance for Plaintiff in Error.*)

And on the sixteenth day of November, A. D. 1899, an appearance of counsel for plaintiff in error was filed in the clerk's office of

said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1899.

THE SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah.
} No. 1355.

The clerk will enter our appearance as counsel for the plaintiff in error.

EDMUND S. DURMENT.
ALBERT R. MOORE.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1899. No. 1355. The Security Trust Co., as adm. of the estate of Sumner W. Matteson, dec., pl'ff in error, *vs.* William H. Dent, as rec'r of the First National Bank of Decorah. Appearance. Filed Nov. 16, 1899. John D. Jordan, clerk. Edmund S. Durment, Albert R. Moore, counsel for plaintiff in error.

(*Appearance for Defendant in Error.*)

And on the sixth day of February, A. D. 1900, an appearance of counsel for the defendant in error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, Receiver, etc.
} No. 1355.

44 The clerk will enter my appearance as counsel for the defendant in error.

EDWARD C. STRINGER.

(Endorsed:) U. S. circuit court of appeals, eighth circuit. May term, 1900. No. 1355. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, receiver, etc. Appearance. Filed Feb. 6, 1900. John D. Jordan, clerk. Edward C. Stringer, counsel for def't in error.

(*Order of Submission.*)

And on the fourteenth day of May, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order of submission, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

MONDAY, *May* 14, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver, etc. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. S. Durment for plaintiff in error, continued by Mr. E. C. Stringer for defendant in error and concluded by Mr. E. S. Durment for plaintiff in error.

Thereupon, this cause was submitted to the court on the transcript of record from said circuit court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventeenth day of October, A. D. 1900, an opinion of said United States circuit court of appeals was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

45 United States Circuit Court of Appeals, Eighth Circuit, May Term, A. D. 1900.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error. } No. 1355. In Error to the Circuit Court of the United States for the District of Minnesota.

Mr. Edmund S. Durment (Mr. Albert R. Moore was with him on the brief) for the plaintiff in error.

Mr. Edward C. Stringer (Mr. McNeil V. Seymour was with him on the brief) for the defendant in error.

Before Caldwell, Sanborn, and Thayer, circuit judges.

This action was brought by William H. Dent, as receiver of the First National Bank of Decorah, to recover from The Security Trust Company, as administrator of the estate of Sumner W. Matteson,

deceased, the plaintiff in error, the amount which was alleged to be due to the receiver on five promissory notes executed by S. W. Matteson in his lifetime, which became the property of the First National Bank of Decorah, Iowa, before their maturity. Four of the notes were executed on April 15, 1895, and one of them on October 19, 1894. Two of the notes had matured prior to Matteson's death, which occurred on July 22, 1895. The remaining three notes matured prior to October 15, 1895, or within less than three months after Matteson's death. As a defense to all of the notes Matteson's administrator pleaded, in substance, that it had fully administered upon Matteson's estate and had been discharged as administrator; that during the course of the administration the notes sued upon had not been presented or allowed against the estate of the deceased and that the action was barred by force of the statutes of the State of Minnesota, where the administration proceedings had taken place. The case was submitted to the trial court upon an agreed statement of facts, from which we cull the following, which are all that are deemed material: Sumner W. Matteson was a resident and citizen of the State of Minnesota from some time prior to January 1, 1894, until his death, and during that time resided at the city of St. Paul, in
46 Ramsey county, Minnesota, where he died on July 22, 1895.

The Security Trust Company was appointed administrator of Matteson's estate and duly qualified and entered upon its duties as such administrator on September 3, 1895. On the same day the probate court of Ramsey county, Minnesota, by which the appointment was made, ordered that six months be allowed from and after the date of the order in which persons having claims against the deceased should file the same in the probate court for examination and allowance or be forever barred; that the first Monday of April, 1896, at a general term of the court to be held at the court-house in the city of St. Paul, be appointed as the time and place when and where the court would examine and adjust claims and demands against the estate of the decedent, and that notice of the hearing be given to all persons interested by publishing the order in question once each week for three successive weeks in a daily newspaper published at St. Paul, in the county of Ramsey, State of Minnesota. Said order was afterwards published in the manner prescribed by the order on September 10, 17 and 24, 1895, and proof of such publication was duly filed. As administrator the Security Trust Company took possession of the assets of the decedent's estate and proceeded to administer upon them in the mode prescribed by law. On March 31, 1896, it filed an account of its administration and its petition to have the same examined and allowed and for the distribution of the residue of the estate to the persons entitled thereto. The court thereupon made an order for the hearing of the petition and notice of the hearing was given, as required by law, and proof of such notice was filed in due season. On April 27, 1896, the probate court examined the account and upon such examination approved of the same and ordered that the account be finally settled and allowed. It further ordered and adjudged, in substance, that all of the real and personal property of the estate which appeared

by the account to be in the administrator's hands be assigned to and vested in the heirs-at-law, who were named in the order. On November 21, 1896, the probate court entertained a petition for an order amending and correcting its final decree by changing the description of some of the property referred to therein and adding a description of some property that had been omitted, and in accordance with the prayer of the petition made an order making the desired alterations in the decree. No order was ever made by the probate court of Ramsey county discharging Matteson's administrator from its trust other than the order heretofore mentioned allowing its final account and directing a distribution of the assets in its hands. The Security Trust Company, as administrator, did not at any time make an assignment or transfer of the decedent's property to the distributees designated in the order of distribution, except in the manner following: Within a few days after said decree had been made Charles D. Matteson, who was its secretary and treasurer, took all the securities and papers in the possession of the Security Trust Company, as administrator, and placed them in a box or receptacle which he kept, and for a long time previous had kept, in the vaults of the said company. On December 23, 1896, it also executed an assignment of one certificate of stock in a land company, which belonged to the estate, to enable the distributees to obtain another certificate in lieu thereof. Other stocks and securities, belonging to the estate, which the trust company held as col-
47 lateral security for an indebtedness due to it by the deceased at the time of his death, it continued to retain in its possession undistributed, and it still retained the same at the time of the trial below.

As early as September 1, 1895, all of the officers and directors of the National Bank of Decorah had notice of the death of said Matteson and that he died at St. Paul in the State of Minnesota, and as early as November 1, 1895, the president of said bank, it being then a going concern, had knowledge that Matteson's estate was undergoing administration in the probate court of Ramsey county, State of Minnesota. The receiver of said bank, who was appointed on November 24, 1896, did not have knowledge of Matteson's death and that his estate was undergoing administration until about December 20, 1896.

During the pendency of the administration proceedings neither the National Bank of Decorah nor any one in its behalf filed a claim against the estate in the probate court of Ramsey county based upon the notes in controversy and no action was brought thereon in any court until the present action was instituted in the circuit court of the United States for the district of Minnesota, which action was commenced by the receiver on January 22, 1897.

The General Statutes of the State of Minnesota for the year 1894 contain the following provisions with respect to the administration of estates:

"SECTION 4509. At the time of granting letters testamentary or of administration, the court shall make an order limiting the time in which creditors may present claims against the deceased for exami-

nation and allowance, which shall not be less than six months nor more than one year from the date of such order; said order shall fix the time or times and place in which the court will examine and adjust claims and demands of all persons against deceased. No claim or demand shall be received after expiration of the time so limited, unless for good cause shown the court may in its discretion, receive, hear and allow such claim upon notice to the executor or administrator, but no claim shall be received or allowed unless presented within one year and six months from the time when notice of the order is given, as provided in the next section, and before final settlement, and the allowance or disallowance of any claim shall have the same force and effect as a judgment for or against the estate; * * *.

"SECTION 4510. The order prescribed in section (4509) shall be published according to law, and shall be notice to all creditors and persons interested.

"SECTION 4511. All claims arising upon contracts, whether the same be due, not due, or contingent, must be presented to the probate court within the time limited in said order, and any claim not so presented is barred forever; such claim or demand may be pleaded as an offset or counter-claim to an action brought by the executor or administrator. All claims shall be itemized, and verified by the claimant, his agent or attorney, stating the amount due, that the same is just and true, that no payments have been made thereon which are not credited, and that there are no offsets to the same to the knowledge of affiant. If the claim be not due, or be contingent, when presented, the particulars of such claim must be stated. The probate court may require satisfactory vouchers or proofs to be produced in support of any claim.

48 "SECTION 4514. No action at law for the recovery of money only shall be brought in any of the courts of this State against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court except as provided in this code. No claim against a decedent shall be a charge against or lien upon his estate unless presented to the probate court as herein provided within five years after the death of such decedent: Provided that this provision shall not be construed as affecting any lien existing at the date of such death. Provided further, that said provision shall not be construed as affecting the right of a creditor to recover from the next of kin, legatee or devisee to the extent of assets received. This provision shall be applicable to the estate of persons who died prior as well as to those who may die after adoption of this code.

"SECTION 4517. Upon the allowance or disallowance of any claim the court shall make its order allowing or disallowing the same. The order shall contain the date of allowance and the amount disallowed, and be attached to the claim with the offsets if any."

"SECTION 4523. The probate court at the time of granting letters testamentary or of administration, shall make an order allowing to the executor or administrator a reasonable time, not exceeding one year and six months, for the settlement of the estate."

On the foregoing statement of facts the trial court rendered a judgment in favor of the receiver and against Matteson's administrator for the sum of $13,535.06, including costs, to reverse which the present writ of error was brought.

THAYER, circuit judge, after stating the case as above, delivered the opinion of the court:

From the foregoing statement it will be observed that the present action against the administrator of S. W. Matteson to recover a judgment on the notes executed by him in his lifetime, was not brought until after the expiration of the six months limited by the order of the probate court of Ramsey county, Minnesota, for the filing, examination and allowance of claims against Matteson's estate nor until after the examination and allowance of the administrator's final account. It is accordingly contended in behalf of the administrator that by virtue of sections 4509 and 4511 of the Minnesota statutes heretofore quoted, the right to a judgment on the notes in controversy was forever barred, although they were owned by a non-resident of the State and a recovery was sought in the Federal court. This contention raises the principal question that we are called upon to consider and determine.

By reference to the aforesaid sections of the Minnesota statute it will be observed that the several probate courts of that State have been vested with the power to determine for what period of time the creditors of a deceased person whose estate is undergoing administration therein shall be given an opportunity to establish their demands against the estate, the only limitation upon that power being that the time granted shall not be less than six months nor more than eighteen months. In the first instance it seems that they cannot allow more than one year for the establishment of demands but for cause shown, which they deem adequate, they may audit and allow claims within eighteen months from the date of the original order fixing the
49 period for allowance, and before a final settlement. It is furthermore manifest that the local administration law was framed with a view of requiring all demands against the estates of decedents to be established in the local probate courts, and not elsewhere, since section 4509 directs those courts to make an order fixing the time and place when they will examine and adjust claims and demands of all persons against the deceased, and section 4511 declares that all claims arising upon contracts "must be presented to the probate court within the time limited in said order" and that any claim not thus presented is barred forever. Moreover, section 4514 declares that "no action at law for the recovery of money only shall be brought in any of the courts of this State against any executor, administrator or guardian upon any claim or demand which may be presented to the probate court, except as provided in this code." In some States the administration laws provide, in substance, that the commencement of a suit in any court, State or Federal, against an administrator or executor to establish a demand against a decedent, shall be deemed the lawful exhibition of the demand from the time process is served, and that if such an action is insti-

tuted within a certain period after the administrator or executor gives notice of his appointment or files his bond, the judgment eventually recovered in such action shall be entitled to payment out of the assets of the estate in the administrator's hands. General Statutes of Mo., 1889, secs. 184 to 186, both inclusive; Sandels & Hill's Digest of the Laws of Ark., secs. 109 to 112, both inclusive; General Statutes of Kan., 1889, sec. 2890; Mills Annotated Statutes of Colo., sec. 4792. The administration law of the State of Minnesota contains no similar provisions, but plainly requires all creditors, whether domestic or non-resident, to file such demands as they may have against the estate of a decedent in the appropriate probate court within such period not less than six nor more than eighteen months as it may see fit to grant, and to prosecute them to judgment in that court or else be barred of the right of recovery.

It is well settled by repeated adjudications that a foreign creditor may establish his debt in the courts of the United States against the personal representative of a decedent, notwithstanding the fact that the laws of the State relative to the administration and settlement of decedents' estates do in terms limit the right to establish such demands to a proceeding in the probate courts of the State. Union Bank of Tenn. *v.* Jolly's Adm'r, 18 How., 503, 507; Green's Adm'x *v.* Creighton *et al.*, 23 How., 90, 107, 108; Suydam *v.* Broadnax, 14 Pet., 67. This is but another form of saying that no State legislature can deprive the Federal courts sitting therein of a jurisdiction which is vested in them by the Constitution and laws of the United States. It follows, of course, that in so far as the administration law of the State of Minnesota attempts to compel citizens of other States to establish demands against the estates of decedents, by a proceeding in the probate court of the State, it is ineffectual to accomplish that object.

It is said, however, that although the statute in question may be ineffectual to compel non-resident creditors to submit their demands to the appropriate probate court for allowance, yet as a statute of limitations it should be given effect to prevent the establishment of a demand in the Federal court of the State after such lapse of time that it cannot be established in the probate court. The vice of this argument as applied to the case in hand consists in the fact
50 that the legislature of the State of Minnesota has not undertaken to bar any claim against a decedent's estate, absolutely, until after the lapse of eighteen months from the date of the order fixing the period of allowance, and in the case at bar that period had not expired when the action was commenced, to wit: on January 22, 1897. It is true that section 4509, when conferring the discretionary power to allow claims within eighteen months, imposes the limitation that they shall be allowed "before final settlement," and it is also true that the final account of Matteson's administrator had been submitted to and approved by the probate court before this action was commenced. But it must be borne in mind that the administration law, section 4523, *supra*, confers upon the probate court the power to determine when the final settlement of an estate shall be made and to allow as much as one year and six months for that purpose. We

think that the Federal court must be conceded the same power, as respects the claim of a non-resident creditor, to allow it within eighteen months, which is conferred upon the probate courts of the State; and we are furthermore of the opinion that the right of a non-resident creditor to sue for the establishment of his demand in the Federal court cannot be made to depend on the length of time that the probate court happens to allow for making a final settlement. If the Federal court gives effect to laws limiting the period for establishing claims in the probate courts of the State, which differ essentially from the general statute of limitations, it should only be required to apply the absolute bar arising from lapse of time which the legislature has erected. There is much reason, perhaps, for saying that citizens of other States ought not to be allowed to maintain an action in the Federal court against a local administrator or executor after the expiration of a period when by the express command of the legislature no such action can be maintained in the local courts, provided the period fixed by the legislature is reasonable; but the right of a non-resident creditor to bring his action in the national courts ought not to be conditioned or made to depend upon the time that a local court chances to approve a final settlement when the time of such approval rests in its discretion and is largely a matter of convenience.

For these reasons we conclude that the case in hand, the same having been brought within less than eighteen months after the order fixing the period for the allowance of claims was made—was lawfully entertained by the trial court.

Another claim which is interposed by the administrator as a defense to his action is, that the approval of its final account and the order of distribution made thereon by the probate court on April 27, 1896, closed the administration and operated without more as a discharge of the administrator, so that there was in point of fact no administrator when the suit at bar was instituted. This view evidently was not entertained by the probate court by which the administrator was appointed, since the record discloses that that court as late as November 21, 1896, entertained a petition on the part of the administrator and at its instance made an order founded thereon by which the decree of April 27, 1896, was amended and corrected in important respects. It is manifest that the probate court acted upon the theory that it had not lost jurisdiction over the administrator; that it was still subject to its orders as to all matters pertaining to the estate and would remain so until it had fully executed its decree and was formally discharged as administrator by an order made to that
51 effect. And this assumption on which the probate court appears to have acted, in our opinion, was entirely correct. The order of distribution that was made on April 27, 1896, required certain acts to be done and performed by the trust company in its capacity as administrator, and until they had been done and performed and the court had approved of the administrator's acts in that behalf it was clearly subject to the orders of the probate court and its functions as administrator had not ceased. The view contended for by the administrator is entirely untenable since it would

deny to the probate courts of the State the right to enforce such orders relative to the distribution of estates as they may see fit to make, leaving administrators, when final settlements are approved, in full possession of all the property then in their hands and at liberty to deal with it as they please until they are called to account by some other tribunal than that from which they originally derived their authority. We are satisfied, therefore, that under the laws of the State of Minnesota the approval of a final settlement and an order of distribution made thereon does not operate forthwith to discharge the administrator, but that its effect is to give the distributees a right to the possession of the property that has been assigned to them and a right to invoke the power of the probate court as against the administrator to compel obedience to its orders.

Finding no error in the record, the judgment below is accordingly affirmed.

SANBORN, circuit judge, concurring:

I concur in the judgment in this case for the reasons stated in the opinion of the court and for the further reason that creditors, heirs, and legatees who are citizens of other States are not deprived of their right to maintain and try their suits in the Federal courts against administrators, executors and all other parties who are citizens of the State of the decedent, nor are they barred of their original rights to maintain and to try these suits in the Federal courts by their failure to present their claims to the State courts as provided by the administration statutes of the States. Suydam *v.* Broadnax, 14 Pet. 67, 74, 10 L. ed. 357; Bank *v.* Vaiden, 18 How. 503, 507, 15 L. ed. 472; Borer *v.* Chapman, 119 U. S. 587, 588, 589, 7 Sup. Ct. 342, 30 L. ed. 532; Lawrence *v.* Nelson, 143 U. S. 215, 224, 12 Sup. Ct. 440, 36 L. ed. 130; Payne *v.* Hook, 7 Wall. 425, 430, 19 L. ed. 260; Arrowsmith *v.* Gleason, 129 U. S. 86, 98, 9 Sup. Ct. 237, 32 L. ed. 630; Johnson *v.* Waters, 111 U. S. 640, 667, 4 Sup. Ct. 619, 28 L. ed. 547; Hayes *v.* Pratt, 147 U. S. 557, 570, 13 Sup. Ct. 503, 37 L. ed. 279; Byers *v.* McAuley, 149 U. S. 608, 621, 13 Sup. Ct. 906, 37 L. ed. 867; Hyde *v.* Stone, 20 How. 170, 175, 15 L. ed. 874; Hess *v.* Reynolds, 113 U. S. 73, 76, 5 Sup. Ct. 377, 28 L. ed. 927.

Filed October 17, 1900.

52 (*Judgment.*)

And on the seventeenth day of October, A. D. 1900, in the record of the proceedings of said circuit court of appeals is a judgment, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, May Term, 1900.

WEDNESDAY, *October* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Minnesota, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court, in this cause, be, and the same is hereby, affirmed with costs; and that William H. Dent, as receiver of the First National Bank of Decorah have and recover against the Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, the sum of twenty dollars for his costs herein.

October 17, 1900.

53 (*Petition for Rehearing.*)

And on the twenty-eighth day of November, A. D. 1900, a petition for rehearing was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

54 United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY, as Administrator of the Estate of Sumner W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error. } No. 1355.

The plaintiff in error respectfully asks that a re-argument of the above-entitled cause be granted as to the propositions, and for the reasons, following:

1. The proposition that the final settlement and distribution in the probate court barred the action in the Federal court.

55 Even admitting, as said in your opinion, that the Federal court must be conceded the same power, as respects a claim of a non-resident creditor, to allow it within eighteen months, which is conferred on probate courts of the State, the result of your decision affirming the judgment of the circuit court does not follow. Your decision claims for the Federal courts other and greater rights

in that respect than the probate court has. Under the statute (cited in your opinion) the probate court has authority to allow the claim, only prior to final settlement and within eighteen months. It was conceded on the argument, is not denied in your opinion, and we think clearly is true, that at the time the action was commenced in the circuit court, the probate court, because of the final settlement of the estate, was without power to allow the claim had it been presented in that court. The indebtedness was incurred by the deceased, while a resident of Minnesota, and while the present statutory provisions as to the disposition of his property in case of death were in force. The plaintiff's right against the estate of the decedent in Minnesota must depend on the law of Minnesota. How, then, can it be that the Federal court can allow a claim against that property which neither the State court of probate, nor any other State court, had power to allow in case the plaintiff had resorted to it?

To say that the right of a non-resident creditor to sue in the Federal court cannot be made to depend on the length of time a probate court happens to allow for making a final settlement, or the time a local court chances to approve a final settlement,
56 when the time rests in the discretion of the court and is largely a matter of convenience, leaves out of consideration several important things. That possibly would be true, if by the statute it were made wholly a matter of discretion of the local court, but not when the statute gives absolutely a reasonable time for commencing suit, and confines the exercise of discretion to a period after the expiration of the reasonable time fixed by the statute. By the statute six months within which to sue is given absolutely. The court has no discretion to shorten the time. But, that the statute makes the right of the creditor to share in the estate after the lapse of the fixed reasonable time conditional upon his claim being presented while the property is yet in the control of the probate court, cannot be so objectionable as to warrant the court in disregarding the condition and thus confer a right which the statute in plain terms denies. Such provision is absolutely essential to practical administration of the estates of a deceased persons.

We submit, also, that the court has failed to give due consideration to the nature and object of administration proceedings. The entire property of the decedent is in the possession of the probate court for the purpose of distribution. The suit to establish the claim is ancillary, in aid of the administration proceeding. It is a suit in fact (though not in form) against the property, for the purpose of determining whether it is one entitled to share in the distribution. The probate court has sole jurisdiction to make the distribu-
57 tion and to determine when it shall be made. When lawfully it has once made the distribution there no longer can be any right to share in the distribution. This distribution, made after notice to the world, is binding on the world (including the Federal courts) because it is a decree *in rem* disposing of property in possession of the court.

The effect of your decision is to deny the right of the State to pro-

vide for the administration of the estates of its deceased citizens within the State, for, if it cannot authorize its courts to determine when an estate has been fully administered and to distribute it free from claims it is without power to administer.

2. The proposition that the decree of distribution and the settlement of the final account did end the administration and divest the probate court of jurisdiction.

Your opinion on this proposition:

1. Fails to give credit to the final decree (a judgment of a court of competent jurisdiction) which declares that the estate has been fully administered, and assigns not only the property particularly described, but also "all other the property of the deceased, in the State of Minnesota."

2. Erroneously* assumes that the probate court in amending the final decree assumed that its jurisdiction to administer the estate still continued. It simply corrected its records pursuant to authority, given in Gen. St. 1894, sec. 4730, to correct or amend its records at any time. Being a court of record it had the right to do
58 so even in the absence of the statute. (Black on Judgments, vol. 1, sec. 161.) In doing so it did not exercise any jurisdiction in the probate or administration of the estate. It simply exercised a right to make its record conform to the facts. It added nothing to its final decree, and took no step in the administration, but simply particularized the property theretofore assigned as "all other the property of the deceased, in the State of Minnesota."

3. Refuses to give credit to the decisions of the supreme court of Minnesota, in that it erroneously assumes that the jurisdiction of the probate court continued for the purpose of enforcing its order of distribution, when in fact it is settled in this State that the probate court has no jurisdiction to enforce its order of distribution. See 61 Minn. 91, Schmidt *v.* Stark: "The effect of a decree of distribution is to transfer the title to the personalty and the right of possession of the realty from the personal representative to the distributees, devisees, or heirs. The property then ceases to be the estate of the deceased person, and becomes the individual property of the distributees, with the full right of control and possession, and with the right of action for it against the personal representative if he does not deliver it to them. If such an action is necessary, resort must be had to some other forum, for the probate court has no further jurisdiction. Hurley *v.* Hamilton, 37 Minn. 160, 33 N. W. 912; Gary Probate Law, secs. 48, 612*b*, 629, 633."

59 While the decision in the case is of importance to the parties directly interested, it is of much greater moment. It is so contrary to what has been the general understanding in Minnesota of the Minnesota law, and to us seems so inevitably to lead to widespread confusion and litigation in this State, as to require us to apply

* That the probate court did not understand that it had any further jurisdiction is shown by the fact (not shown in the record, but true) that before bringing suit in the circuit court the Black River national bank applied to the probate court to have the decree of distribution vacated and for leave to file its claim, and the application was denied on the ground that the court no longer had jurisdiction.

for a re-argument of the case, and to warrant the court in granting the application.

EDMUND S. DURMENT AND
ALBERT R. MOORE,
Attorneys for Plaintiff in Error.

I have examined the opinion handed down in the foregoing entitled action and the briefs of counsel, as well as the record. I am of opinion that there ought to be a re-argument of the case on the propositions stated in the foregoing petition and for the reasons therein stated. Said petition is made in good faith and on the advice of the undersigned.

EDMUND S. DURMENT,
Of Counsel for the Plaintiff in Error.

Filed Nov. 28, 1900.

JOHN D. JORDAN, *Clerk.*

60 (*Order Denying Petition for Rehearing.*)

And on the seventeenth day of December, A. D. 1900, in the record of the proceedings of said circuit court of appeals is an order denying the petition for a rehearing, in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1900.

MONDAY, *December* 17, 1900.

THE SECURITY TRUST COMPANY, as Administrator, etc., Plaintiff in Error,
vs.
WILLIAM H. DENT, Receiver, etc. } No. 1355.

In error to the circuit court of the United States for the district of Minnesota.

This cause came on this day to be heard upon the petition for a rehearing filed by counsel for the plaintiff in error.

On consideration whereof, it is now here ordered by this court, that said petition for a rehearing of this cause be, and the same is hereby denied.

December 17, 1900.

(*Bond on Writ of Error.*)

And on the fourteenth day of January, A. D. 1901, a bond on writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, in the words and figures following, to wit:

In United States Circuit Court of Appeals, Eighth Circuit.

SECURITY TRUST COMPANY OF ST. PAUL, as Administrator of the Estate of Summer W. Matteson, Deceased, Plaintiff in Error,
vs.
WILLIAM H. DENT, as Receiver of the First National Bank of Decorah, Defendant in Error.

On error from United States circuit court, district of Minnesota, third division.

61 Know all men by these presents, that we, Security Trust Company, plaintiff in error in the above-entitled action, as principal, and Edward J. Hodgson and Chas. D. Matteson, as sureties, are held and firmly bound unto William H. Dent, as receiver of the First National Bank of Decorah, the defendant in error, above named, in the sum of three hundred dollars lawful money of the United States to be paid unto the said plaintiff, his successors in office, or assigns, for which payment well and truly to be made we jointly and severally bind ourselves and the successors of said Security Trust Company, and the heirs, executors and administrators of the said sureties firmly by these presents.

Sealed with our seals and dated this 4th day of January, A. D. 1901.

The condition of this obligation is such, that whereas a final judgment was rendered and entered in said circuit court for the district of Minnesota in the above-entitled action in favor of the defendant in error and against the said plaintiff in error on the 17th day of April, 1899, and was thereafter affirmed by the judgment of said circuit court of appeals, and the said plaintiff in error has duly made an assignment of errors and is about to apply for a writ of error to issue to said circuit court of appeals in order that said judgment and the records and proceedings in said suit may be reviewed and examined in the Supreme Court of the United States;

Now therefore, if said writ of error shall be allowed and said plaintiff in error shall prosecute its writ to effect, and if it fail to make its plea good, shall answer all costs, then this obligation shall be void, otherwise of force.

In witness whereof the said plaintiff in error has caused this bond to be executed in its corporate name and its corporate seal to be thereto affixed, and the said sureties have thereto set their hands and seals this 4th day of January, A. D. 1901.

SECURITY TRUST COMPANY,
By EDWARD J. HODGSON, [SEAL.]
President, and
CHAS. D. MATTESON, *Secretary.*
EDWARD J. HODGSON. [SEAL.]
CHAS. D. MATTESON. [SEAL.]

Signed and sealed in presence of
H. A. PRESLER.
J. A. LAZERMAN.

62 Approved:
DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

January 10th, 1901.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 4 day of January, A. D. 1901, came before me personally Edward J. Hodgson, president, and Charles D. Matteson, secretary of said Security Trust Company, to me well known and who being by me severally duly sworn on oath says: that he, the said Edward J. Hodgson is the president, and he the said Charles D. Matteson, is the secretary, of said Security Trust Company, a corporation, and that the foregoing bond was executed by said Security Trust Company by authority of its board of directors, and that the seal thereto attached is the corporate seal of said corporation, and each acknowledged the same to be the free act and deed of said corporation.

And at the same time and place before me personally appeared Edward J. Hodgson and Chas. D. Matteson, two of the persons who executed the foregoing bond as sureties thereon, to me personally known to be the same persons described in and who executed the foregoing bond as sureties, and each severally acknowledged the same to be his own free act and deed.

Witness my hand and official seal this 4th day of January, A. D. 1901.

JOHN A. LAZERMAN,
[SEAL.] *Notary Public, Ramsey County, Minnesota.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

Edward J. Hodgson and Chas. D. Matteson came before me personally on this 4th day of January, A. D. 1901, and being severally duly sworn each for himself doth depose and say: that he is
63 the surety above named, and a resident and freeholder of the State of Minnesota, and worth the sum of six hundred dollars ($600) over and above his debts and liabilities, and exclusive of his property exempt by law from execution.

EDWARD J. HODGSON.
CHAS. D. MATTESON.

Subscribed and sworn to before me this 4th day of January, A. D. 1901.

JOHN A. LAZERMAN,
[SEAL.] *Notary Public, Ramsey County, Minn.*

(Endorsed:) United States of America. In supreme court. Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, as receiver, etc., defendant in error. Cost bond on writ of error. Filed Jan. 14, 1901. John D. Jordan, clerk. Durment & Moore, attorneys and counselors at law, 616–619 Germania Life Ins. bldg., St. Paul, Minn.

(*Writ of Error.*)

And on the fourteenth day of January, A. D. 1901, a writ of error was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which is hereto attached and herewith returned.

64 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the United States circuit court of appeals for the eighth circuit, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court of appeals before you, or some of you, between The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, defendant in error, a manifest error hath happened, to the great damage of the said plaintiff in error as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of January, in the year of our Lord one thousand nine hundred and one.

[Seal of the Supreme Court of the United States.]

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] No. — Security Trust Company, as administrator, etc. plaintiff in error *vs.* William H. Dent, rec'r, etc. Writ of error. Filed Jan. 14 1901 John D. Jordan, clerk.

UNITED STATES OF AMERICA, }
Eighth Circuit. }

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof, I hereto subscribe my name and affix the seal of the United States circuit court of appeals for the eighth circuit, at office in the city of St. Louis, Missouri, this eighteenth day of January, A. D. 1901.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

65 (*Citation.*)

And on the fourteenth day of January, A. D. 1901, a citation was filed in the clerk's office of said circuit court of appeals, in said cause, the original of which with admission of service thereon, is hereto attached and herewith returned.

66 UNITED STATES OF AMERICA, *ss:*

To William H. Dent, as receiver of the First National Bank of Decorah, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the United States circuit court of appeals for the eighth circuit wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable David J. Brewer, associate justice of the Supreme Court of the United States, this tenth day of January, in the year of our Lord one thousand nine hundred and one.

DAVID J. BREWER,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Security Trust Company, as administrator, etc., plaintiff in error, *vs.* William H. Dent, rec'r, etc. Citation. Service of within citation admitted this 12th day of January A. D. 1901. Edward C. Stringer, McNeil V. Seymour, att'ys for Wm. H. Dent receiver &c. defendant in error. Filed Jan. 14 1901. John D. Jordan, clerk.

67 (*Clerk's Certificate.*)

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals for the eighth circuit, do hereby certify that the foregoing sixty-six pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of the said United States circuit court of appeals for the eighth circuit, in a certain cause wherein The Security Trust Company, as administrator of the estate of Sumner W. Matteson, deceased, was plaintiff in error, and William H. Dent, as receiver of the First National Bank of Decorah, was defendant in error, No. 1355, May term, 1900, as full, true and complete as the same remain on file and of record in my office.

I do further certify that the original citation with admission of service thereon and the original writ of error with my return thereto is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the eighth circuit, at the city of St. Louis, Missouri, this eighteenth day of January, A. D. 1901.

Seal United States Circuit Court of Appeals, Eighth Circuit.

JOHN D. JORDAN,
Clerk United States Circuit Court of Appeals for the Eighth Circuit.

Endorsed on cover: File No. 18,034. U. S. C. C. of appeals, 8th circuit. Term No. 240. The Security Trust Company as administrator of the estate of Sumner W. Matteson deceased, plaintiff in error, *vs.* William H. Dent, as receiver of the 1st National Bank of Decorah. Filed January 28, 1901.